



1645

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael A. Apicella et al.

Title: VACCINE AND COMPOSITIONS FOR THE PREVENTION AND TREATMENT OF NEISSERIAL INFECTIONS

Docket No.: 875.045US1
Filed: January 31, 2002
Examiner: Padma Baskar

Serial No.: 10/066,551
Due Date: April 25, 2003
Group Art Unit: 1645

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Commissioner for Patents
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- ☒ A return postcard.
- ☒ A Response to Restriction Requirement (3 Pages).

If not provided for in a separate paper filed herewith, Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers and please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938, Minneapolis, MN 55402 (612-373-6900)

By: Ann S. Viksnins
Atty: Ann S. Viksnins
Reg. No. 37,748

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Candis B. Buending

Name

Signature

Customer Number 21186

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
(GENERAL)

P.O. Box 2938, Minneapolis, MN 55402 (612-373-6900)

S/N 10/066551

PATENT

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Examiner: Padmavathi Baskar

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RESPONSE TO RESTRICTION REQUIREMENT

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Applicant has reviewed the Restriction Requirement mailed March 25, 2003, where the Examiner requested election of one of the following groups:

Group I (claims 8-14, 51-52 and 56) drawn to a nucleic acid and a vaccine composition comprising DNA of SEQ ID NO:6-10 and 12.

Group II (claims 1-7, 15-25 and 57) drawn to a polypeptide and a vaccine composition comprising protein SEQ ID NO:1-5 and 11.

Group III (claims 50 and 53) drawn to an inhibitor.

Group IV (claim 58) drawn to a method of preventing a female patient against Neisseria infection using DNA.

Group V (claims 26-38, 54, 57 or 39, 43-49) drawn to a method of preventing a female patient against Neisseria infection using protein, recombinant protein or a compound that inhibits CR3.

Group VI (claims 39-42 and 55) drawn to a method of preventing or colonization of Neisseria using a compound that inhibits CR3.

Applicant provisionally elects, with traverse, the claims of Group II (claims 17, 15-25, and 57).

The Restriction Requirement is traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. It is

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Page 2

Dkt: 875.045US1

respectfully submitted that the search and examination of the claims can be made without serious burden on the Office. Thus, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

The Examiner has indicated that for each group of inventions I-VI above election to one of SEQ ID NO: 1-12 must be selected. Applicants elect with traverse SEQ ID NO:4 for examination at this time. Claims 1-7, 15-25 and 57 are within Group II, and claims 1, 5, 7, 15, 19, 21, 23-25 and 57 are readable on this election.

The Examiner is reminded that M.P.E.P. § 803.02 states that "if the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the Examiner will not . . . require restriction. [S]hould no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended . . . to the extent necessary to determine patentability of the Markush-type claim."

Applicant respectfully traverses the Election of Species Requirement associated with the election of Group II. The members of the Markush group are few in number; *i.e.*, only five members. Thus, a search and examination of the entire claim can be made without serious burden on the Examiner. Further, the Examiner is reminded that if no prior art is found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended to the extent necessary to determine patentability of the Markush-type claim.

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Serial Number: 10/066551

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Title: VACCINE AND COMPOSITIONS FOR THE PREVENTION AND TREATMENT OF NEISSERIAL INFECTIONS

Page 3

Dkt: 875.045US1



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Respectfully submitted,

MICHAEL A. APICELLA ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
612-373-6961

Date 25 April 2003 By Ann S Viksnins
Ann S Viksnins
Reg. No. 37,748

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Candis B. Buending

Name

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